V PAUL RAJ CHELLADURAI

v.

JABATAN TELEKOM MALAYSIA BHD & ORS

COURT OF APPEAL, KUALA LUMPUR
SITI NORMA YAAKOB JCA
MAHADEV SHANKER JCA
DENIS ONG JIEW FOOK JCA
[CIVIL APPEAL NO: W-01-6-94]
25 APRIL 2000

ADMINISTRATIVE LAW: *Remedies - Certiorari - Grounds not pleaded in supporting statement - Whether application ought to be dismissed - Rules of the High Court 1980, O. 53 r. 3(1)*

The appellant was dismissed after the institution of a disciplinary proceedings against him. The appellant later challenged the propriety of the disciplinary proceedings by filing in the High Court, a motion for *certiorari* to quash the decision. The High Court dismissed the motion. The appellant then appealed to the Court of Appeal by way of judicial review on the ground that there had been procedural unfairness in the conduct of the proceedings. He contended that he was not informed of the nature of the extraneous matters that the disciplinary board had taken into account when considering the charge against him and that he was not given the opportunity to plead in mitigation before the dismissal was decided against him. These objections, however were not set out in the statement supporting his application for *certiorari*.

Held:
Per Siti Norma Yaakob JCA

[1] Order 53 r. 3(1) Rules of the High Court 1980 emphasises the principle that a party is bound his own pleadings and since the rule is mandatory in nature, the omission to plead in the statement the two objections which were raised before the instant court, was sufficient reason for the court to hold that the appeal lack merits and ought to be dismissed.

[Appeal dismissed with costs.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Perayu dibuangkerja selepas prosiding disiplin diambil terhadap beliau. Perayu kemudiannya mencabar prosiding disiplin tersebut dengan memfailkan di Mahkamah Tinggi satu usul untuk *certiorari* membatalkan keputusan tersebut. Mahkamah Tinggi menolak usul tersebut. Perayu kemudiannya merayu ke Mahkamah Rayuan melalui kajiansemula kehakiman (judicial review) atas alasan bahawa terdapat ketidakadilan prosedur dalam pelaksanaan prosiding tersebut. Beliau mendakwa bahawa beliau tidak diberitahu mengenai perkara tambahan yang telah diambil kira oleh lembaga disiplin apabila mempertimbangkan pertuduhan terhadapnya dan bahawa beliau tidak diberi peluang untuk memberi hujahan hukuman ringan sebelum pemecatan diputuskan terhadapnya. Walaubagaimanapun, bantahan-bantahan ini tidak dinyatakan di dalam pernyataan yang menyokong permohonan beliau untuk *certiorari.*

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Aturan 53 k. 3(1) Kaedah-Kaedah Mahkamah Tinggi 1980 menekankan prinsip yang sesuatu pihak adalah tertakluk kepada plidingnya dan memandangkan bahawa peruntukkan ini bersifat mandatori, ketinggalan untuk memplid di dalam pernyataan dua bantahan yang dibangkitkan di mahkamah semasa, adalah memadai bagi mahkamah untuk memutuskan bahawa rayuan ini kekurangan merit dan wajar ditolak.

[Rayuan ditolak dengan kos.]

Case referred to:
Raja Abdul Malek Muzaffar Shah Raja Sharuzzaman v. Setiausaha Suruhan Jaya Pasukan Polis & Ors [1995] 1 CLJ 619 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 42(l)
Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980, general order 26, 4(2)(c)(ii), (f), (g)
Rules of the High Court 1980, O. 53 rr. 1(1), (2), 3(1)

For the appellant - Saran Singh; M/s Saran Singh & Co
For the respondents - Al-Baishah Abdul Manan; SFC

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R2-25-46-93]

Reported by Izzaty Izzuddin

JUDGMENT

Siti Norma Yaakob JCA:

At the outset, we wish to say that this judgment is delivered in circumstances falling within s. 42(l) of the Courts of Judicature Act 1964. A member of the panel who heard this appeal, Mahadev Shanker JCA has since retired as a judge of this court and it now befalls on the remaining members of the panel namely, Denis Ong Jiew Fook JCA and I, to determine this appeal on facts that appear as follows.

The matter came before us by way of a judicial review in respect of a wrongful dismissal dispute which originated when disciplinary proceedings were commenced by the disciplinary board ("the board") of the first respondent against the appellant under General Order 26 of the Public Officers (Conduct and Discipline) (Chapter "D") General Orders 1980 ("the Code"). The first respondent had employed the appellant as a daily rated labourer on 5 April 1955, but over the years the appellant obtained recognition for his work and through successive promotions, he was by 1986, placed on the pensionable establishment.

By a show cause letter dated 30 August 1986, the board informed the appellant that following an adverse report made against him, disciplinary action would be taken with a view to his dismissal under General Order 26 of the Code. He was charged that on 19 January 1984, two weeks before the Chinese New Year, he accepted an "Ang Pow" of RM20 for services rendered in installing a telephone at the premises of a businessman who managed a laundry shop. Not content with the RM20, the appellant was alleged to have demanded by force another RM10 from the same businessman and his conduct in accepting and demanding such gratification was dishonest and irresponsible and that he had used his public position for his advantage in breach of General Order 4(2)(f), (g) and (c)(ii) of the Code. The appellant was given 14 days from the date of the receipt of the show cause letter to make his written representation to exculpate himself.

He did so in his letter dated 17 September 1985, wherein he denied the charge and gave his side of the story as to what had happened. He maintained that on the day in question, in addition to installing the telephone at the premises of the businessman, he was also asked to add an illegal extension in the kitchen of the premises. He refused to do so whereupon the businessman pushed some money into the shirt pocket of a colleague who was assisting him at the time. When his colleague returned

the money, the businessman was chided for trying to bribe him. After the installation work was complete, the businessman offered an "Ang Pow" to him but he refused to take it and he maintained that because of this rebuff, the businessman had filed a complaint against him.

On l December 1986, the appellant through his head of department received a letter dated 19 November 1986, from the board informing him that the board had considered the charge and his defence to it and had decided to dismiss him from his employment with effect from l December 1986. The appellant was also informed that he had the right to appeal against the decision to the disciplinary appeal board of the second respondent within 14 days from 1 December 1986.

On 6 December 1986, the appellant submitted his appeal through his head of department and in his undated letter, he again reiterated his denial of the charge and appealed that the decision to dismiss him be withdrawn.

Six years and three months later, the appellant was informed by a letter dated 26 February 1993, that the disciplinary appeal board of the second respondent had dismissed his appeal and confirmed the punishment of dismissal imposed on him by the board to take effect from l December 1986. A copy of a letter dated 23 February 1993, containing the decision of the disciplinary appeal board of the second respondent was also enclosed for the appellant's information.

It was following this that the appellant challenged the propriety of the disciplinary proceedings that had been brought against him, in the High Court. He filed firstly an originating motion *ex parte* dated 23 March 1993, for leave under O. 53 r. 1(1) and (2) of the Rules of High Court 1980 ("RHC"). Subsequently he filed another originating motion dated 7 September 1993, praying for an order for *certiorari* to quash the decision of the disciplinary appeal board of the second respondent and to restore him to the position that he held with the first appellant including all benefits due to him. The High Court declined to issue an order for *certiorari* and dismissed the appellant's motion with costs.

Appeals of this nature invariably boil down to the objection that there had been procedural unfairness in the conduct of the domestic enquiry leading to the decision to dismiss. In this instance the procedural unfairness alleged by the appellant before us is confined to the following matters.

(1) He was not informed as to the nature of the extraneous matters that the Board had taken into account when considering the charge against him.

(2) He was not given the opportunity to plead in mitigation before dismissal was decided against him.

Relying on the decision of this court in the case of *Raja Abdul Malek Muzaffar Shah bin Raja Sharuzzaman v. Setiausaha Suruhanjaya Pasukan Polis & 2 Ors* [1995] 1 CLJ 619, it is the appellant's contention that the phraseology "dan lain-lain maklumat yang berkaitan" appearing in the board's letter of dismissal dated 19 November 1986, implies that other extraneous matters of which the appellant had no notice of, had been considered and accepted by the board before he was found guilty of the charge. Since he was not given the opportunity to rebut or comment on such extraneous matters, the disciplinary proceedings were flawed and tainted with irregularity.

The case of *Raja Abdul Malek (supra)* which was also a wrongful dismissal suit was decided on the specific objection expressed in the pleadings that the phraseology "dan lain-lain maklumat yang berkaitan" in the letter of dismissal gave the distinct impression that certain material information was considered and given weight and which was never put to the appellant. That was a writ action followed by a trial where the appellant gave evidence but the respondents elected not to call any evidence and as such gave no explanation what was involved in the penultimate phraseology. It was under those circumstances that this court held that the phraseology "would leave a reasonable man with the distinct impression that the defendants considered and gave weight to certain material information that was never put to the plaintiff. Of course it was open to the defendants to have given a full explanation as to what was meant by that critical phrase..... But the defendants took the option of remaining silent."

In the instant appeal before us, proceedings in the High Court were governed by O. 53 of the RHC where only affidavit evidence were relied upon by both sides. Under O. 53 r. 1(2), the application for leave must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought. Under O. 53 r. 3(l) no other grounds or relief other than those set out in the statement shall be relied upon at the hearing of the originating motion on its merits.

In his statement dated 23 March 1993, the appellant identified the following grounds on which he sought the order for *certiorari.*

(1) He was not informed of the charge against him.

(2) His supervisor had never complained about his work.

(3) The respondents had failed to inform him to be present at the disciplinary inquiry before the decision to dismiss him was made.

(4) The respondents had breached the rules of natural justice.

(5) The respondents' action had not followed established principles.

(6) He was not given the opportunity to defend himself.

(7) The respondents took into account irrelevant matters.

(8) The respondents failed to consider relevant factors.

(9) He was not given a warning before he was dismissed.

Clearly from the aforesaid grounds, the appellant never raised as issues his objections to the use of the phraseology "dan lain-lain maklumat yang berkaitan" and the loss of the opportunity to plead in mitigation. These two objections were only raised for the first time before us as in the court below the appellant was more content to submit on other issues. Order 53 r. 3(l) of the RHC emphasises the principle that a party is bound by his own pleadings and since that order and rule is mandatory in nature, the omission to plead in the statement the two objections raised before us is sufficient reason for us to hold that this appeal lack merits and on that conclusion we dismiss it with costs, confirm the order of the High Court and order that the deposit be paid out to the respondents to account of their taxed costs.